

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 181 OF 2004

Vithal Nivrutti Satale and ors. .. Applicants

Vs.

Bhanudas Shidu Pawar and ors. .. Respondents

Mr. S.G. Deshmukh for the applicants.

CORAM: B.H. MARLAPALLE, J.

Date : August 10, 2005.

P.C.:

1. Heard Mr. Deshmukh, the learned counsel for the applicants who are impleaded as Defendant nos.1,3,9 and 10 in Special Civil Suit No.179 of 1996. The present respondent no.1 is the plaintiff in the said suit which has been filed for a decree of specific performance.

2. In the said suit defendant nos.1,9 and 10 filed an application at Exh.40 on or about 15/9/2003 stating that the suit was dismissed against defendant nos.5 to 7 on 25/7/1996 and defendant no.8 Smt.

Droupadi had expired on 6/7/2002, but her legal heirs were not brought on record within the prescribed period. On these grounds the defendants prayed for dismissal of the suit. By the impugned order dated 16/2/2004 the said application has been rejected by the learned Joint Civil Judge, Senior Division at Sangli.

3. The trial court noted that the suit was based on the agreement dated 3/12/1987 signed between the plaintiff and Nivrutti Satale and Nivrutti died on 25/7/1992. Hence the suit was filed against his LRs. The defendant no.1 had appeared and filed Written Statement at Exh.24 and admitted the execution of the agreement dated 3/12/1987 but contended that it was a transaction by way of security for loan and it was not an agreement for sale. He also stated that defendant no.2 was acting as "Karta" of their joint family and he had received the earnest money. It was further alleged that defendant no.2 used the entire amount for himself and nothing was given to the benefit of the joint family. The defendant no.1, therefore, in the

alternative prayed for the decree to be passed against defendant no.2 only. The defendant nos.3 and 8 filed their Written Statement at Exh.32 and also disputed the transaction. Though defendant no.3 had signed the Written Statement, she did not cause her appearance either personally or through an Advocate. Defendant No.10 filed pursis at Exh.33 and adopted the Written Statement submitted by the defendant no.1. Similar pursis was also filed by defendant no.9. Suit was dismissed against defendant nos.5 to 7 for want of steps as per order dated 5/12/2001 and defendant nos.2 and 4, though duly served, failed to appear and, therefore, the suit has proceeded against them exparte as per the order dated 21/9/2001. The trial court further noted that on the demise of defendant no.8 Droupadi there were no other LRs then the defendants 1 to 7, 9 and 10 and as per the provisions of Order 22 Rule 1 of C.P.C. if the right to sue survives against the LRs, on the demise of the defendant concerned, the suit would not abate and, therefore, the court below noted that on the demise of Droupadi her name only requires to be deleted from the plaint and the entire suit would not stand dismissed.

4. Mr. Deshmukh, the learned counsel for the applicants referred to the averments made in the plaint itself and submitted that when the plaintiff himself has proceeded on the premises that the suit property was the property of late Nivrutti and all his heirs were impleaded as defendants, in the absence of any one of them or some of them, the suit cannot proceed further and it has to be dismissed. Mr. Deshmukh may be right in his contentions but his contentions can be examined only after recording evidence of the parties and if at that stage the trial court comes to the conclusion that all the necessary parties were not before it, it may pass an appropriate order. But at this stage and more particularly when the suit is pending for last about nine years, it would not be efficacious to dismiss the suit as abated. The consequence of the suit having been dismissed against some of the defendants are required to be seen by the trial court after the evidence is recorded and not at this stage. The application at Exh.40 was filed on the demise of Droupadi on 6/7/2002

and the court has noted that the suit would not stand abated because her LRs are already on record. If during the evidence it is found that some of the LRs or any one of them, who has share in the suit property, was not before the court, the court will take cognizance of the same and pass appropriate orders.

5. Under the premises, the challenge to the impugned order is unsustainable and, therefore, the revision application is rejected summarily.

. It is directed that Special Civil Suit No.179 of 1996 be heard and decided as expeditiously as possible and preferably by 31st March, 2006.

(B.H. Marlapalle, J.)